

Employment Act to authorize private law suits against state violators. A case raising a similar issue with respect to the Americans with Disabilities Act is sure to follow. And if the Court says no, private individuals who suffer age, disability, and other forms of discrimination at the hands of state actors will have few means at their disposal to enforce their rights under federal law, and the federal government will rarely be able to help them.

The Court left open the possibility that the federal government could sue noncompliant states, but if you think that it is realistic for the federal government to come to the rescue by going into court on a regular basis to vindicate the federal rights of private individuals, think again. I do not see a massive expansion of the federal litigating corps happening any time soon. Nor do I see how that could be anything but self-defeating if the goal is to minimize the federal intrusion into state government affairs. By elevating the states' sovereign immunity to an immutable principle of constitutional law, the Court, as Justice Breyer recognized in his *College Savings Bank* dissent: "makes it more difficult for Congress to decentralize governmental decisionmaking and to provide individual citizens, or local communities, with a variety of enforcement powers. By diminishing congressional flexibility to do so, the Court makes it somewhat more difficult to satisfy modern federalism's more important liberty-protecting needs. In this sense, it is counter-productive."

Now don't get me wrong. Sometimes the federal and state governments do not get their relationship quite right. We do not have infallible institutions. But when the Supreme Court restricts the flexibility of Congress to decide how best to address national problems within the scope of its enumerated powers, the Court truncates the learning process otherwise underway in our political institutions—a result a conservative court—conservative with a small "c"—should hesitate to effect.

The Court has imposed by fiat limitations on the exercise of federal power that might very well have come about without the Court's interference. In other words, the Court in *Garcia v. San Antonio Metropolitan Transit Authority* got it right when, in 1985, it overruled *National League of Cities v. Usery*, a case decided a decade earlier, that had restricted the federal government's power to regulate the states "in areas of traditional governmental functions." Instead, the Court announced in *Garcia* that the political process, not the Court, should serve as the principal check on federal overreaching. I must disagree with the notion that leaving it to Congress and the President is like leaving the fox to guard the chicken coop, or as Justice O'Connor put it in her dissent in *Garcia*, like leaving the "essentials of state sovereignty" to Congress' "underdeveloped capacity for self-restraint."

The Violence Against Women Act civil rights remedy is a good example of Congress' developing capacity for self-restraint. At the outset, those most concerned about domestic violence and rape wanted a statute with a broad sweep, and so we started out by introducing a provision in 1990 that arguably would have federalized a significant portion of state laws against domestic violence and rape. But the Conference of Chief Justices of State Supreme Courts, the Judicial Conference of the United States—and Chief Justice Rehnquist, in particular—pointed out to Congress, while the bill was under consideration, that the civil rights provision might significantly interfere with the states' handling of domestic relations and rape cases, while at the same time, overburdening the federal courts. The federal and state judi-

ciaries raised the concern, we examined it, and we decided that they were right. Congress then carefully redrafted the civil rights remedy so that it would not have that effect.

There are other recent examples—such as the Unfunded Mandates Act—that came about because the states complained to Congress that we were forcing them to use their tax dollars to do whatever we mandated in Washington. The states staged a mini-rebellion. So Congress wrote a new law requiring federal restraint. And for that, I must give my Republican colleagues their due.

But when the Supreme Court plays traffic cop on the streets of federalism, the Court does our country a disservice by cutting this national political dialogue short. We are already reaching many of the conclusions the Court has now cemented into the Constitution. James Madison wrote in the *Federalist Papers* that the new federal government would be sufficiently national and local in spirit as "to be disinclined to invade the rights of the individual States, or the prerogatives of their governments." Our political institutions can be trusted. The Framers understood this.

In short, the disconnect between our public and cultural perceptions of our institutions and reality is stunning. Keep in mind that the rest of the world is struggling to emulate our institutions because they believe it is our institutions that separate us from other nations—indeed, from other democracies—and are the bedrock upon which our successes are founded.

Yet our public discourse, our legal opinions, our very culture, are compelling us to overlook or scorn our own accomplishments. We are losing, as a nation, the communal notion that our strength lies in our institutions. Relentlessly accentuating the negative when it comes to our political institutions, however, eclipses our considerable successes. And this predilection to distrust the political branches now seems to be shared equally by the judicial branch, not only when it comes time to decide how to distribute power between the federal government and the states, but also when it comes to making a judgment of what is in the best interests of Americans.

I talked to you tonight about cynicism, devolution of power, and how we got here. In my view, all of that can be overcome by the right leadership, the right people in power, who will recharge the public's imagination and confidence. The public mood can be transformed in an election, a single cycle. Maybe it will take a generation. But it can be changed. Elected officials who cater too much or too little to state interests can be voted out of office. But if the Supreme Court chisels into stone new constitutional restrictions on federal power, new hoops through which Congress must leap, where will we be then? You cannot go to the polls to undo a constitutional ruling of the Supreme Court. There is no further appeal—no appeal to a higher court, no appeal to the voters. Nothing short of a new constitutional convention or an amendment to the Constitution—and you know how easy that is—or will do. James Madison was right: trust the political process. "WE CANNOT AGREE"? Please.

Let me conclude by making the following simple point: if, at the federal level, we are such a failure institutionally, why does the rest of the world look to us to copy our supposed frailties? If we are such a failure—with our last six Presidents supposedly flops—how is that our incomes are actually growing, crime is going down, drug use is down, and our economy is in better shape than that of any nation in the history of the world? How did we produce a nation willing and able, as the President of Bulgaria pointed out, to spend billions of dollars and risk the lives of

its men and women to advance the cause of human rights? Did it happen by chance? Did it happen by accident? It happened as a direct result of our unique political institutions.

The Framers set out to create a centralized government robust enough to deal with national problems, but with built-in guarantees that it be respectful of, and sensitive to, local concerns. There is an inherent tension in the document. But look at the sweep of history: as the balance of power has shifted back and forth between the national government and the states, our resilient political branches have adjusted and responded. The rest of the world gets it.

We must remember that politics—and politicians—are not the enemy. The Constitutional Convention was composed of men who were regarded as gifted even in their own day. As the French charge d'affaires wrote to his government as the Convention convened:

If all the delegates named for this Convention at Philadelphia are present, we will never have seen, even in Europe, an assembly more respectable for the talents, knowledge, disinterestedness, and patriotism of those who compose it.

Above all else, these men were politicians. And I am not suggesting by this that our government today boasts the likes of a Jefferson or a Madison, but I am suggesting that we have fine and decent men and women with significant capabilities who choose public service. And some of you are among them.

The hostility we see from the Supreme Court toward the elected branches of government is the same suspicion we see in the eyes of the ordinary person on the street. "Politics" has become a dirty word. But as those of you here who live in this state of strong local community governments and town hall meetings, know better than anyone, "politics" is fundamental to how we govern ourselves in a democracy. At the end of the day, politics is the only way a community can govern itself and realize its goals without the sword.

So I stand before you today, on this 212th anniversary of the completion of the work of the Constitutional Convention, ready and willing to defend politics—even national politics. It was what those 50 gentlemen, all strangers, who met 212 years ago defended and vindicated. And it is what, in the end, has made and will continue to make us secure and strong.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2001

The PRESIDING OFFICER. The Senate will now resume consideration of S. 2521, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 2521) making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2001, and for other purposes.

The PRESIDING OFFICER. The Chair recognizes the Senator from Montana.

Mr. BURNS. The ranking member of this committee has some chores to do. I am finding no one on the floor who wants to talk on this piece of legislation, unless the Senator from Delaware wants to make his Kosovo statement.